

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DATAMIZE, LLC, No C- 04-2777 VRW
Plaintiff, ORDER
v
PLUMTREE SOFTWARE, INC and BEA
SYSTEMS, INC,
Defendants.

It appears that Plumtree's motion for disqualification turns on Robert A Cote's ("Cote") duty of confidentiality to Plumtree regarding information shared by Plumtree during a joint defense effort in earlier litigation. Michael B Levin, Plumtree's counsel during the earlier litigation, attests that Plumtree shared material, confidential information with Cote and others during the joint defense effort. Levin Decl, Doc #108 at ¶¶15-17. Cote does not deny receiving confidential information, but Cote also states that he does not recall receiving any confidential information from Plumtree. Cote Decl, Doc #110 at ¶6. While Mr Cote's recollection of any confidential information received is not material to

1 deciding this motion, the record does not establish to the court's
2 satisfaction that the information Plumtree shared with Cote is
3 material to the issues in this litigation. To establish that such
4 information was shared, Plumtree has offered to submit evidence of
5 its communications with Cote to the court for in camera review.
6 Doc #107 at 4. Plumtree is ORDERED to submit evidence of material,
7 confidential information shared with Cote by January 31, 2008.

8 Plumtree's submission shall be filed under seal and ex
9 parte.

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11 IT IS SO ORDERED.



14 VAUGHN R WALKER
15 United States District Chief Judge
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